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Vijay Vaidyanathan

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EXAMINER

JABR, FADEY S

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,751	Applicant(s) VAIDYANATHAN ET AL.	
	Examiner Fadey S. Jabr	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 4, 5, 14-16, 25, 28, 34, 35 and 37 have been amended. Claims 1-40 remain pending and are again presented for examination.

Response to Arguments

1. Applicant's arguments filed 14 September 2006, with respect to 35 U.S.C. 112, second paragraph, have been fully considered and are persuasive. Thus, the rejection is withdrawn.
2. Applicant argues (with respect to claims 1, 3-4, 10-12 and 15) that fails to establish *prima facie* obviousness. Examiner notes The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also In re Kotzab, 217 F.3d 1365, 1370, 55USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); In re Eli Lilly & Co., 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning). MPEP § 2144.

Further, Examiner notes that the mere fact that Vestergaard et al. fails to *explicitly* disclose the stated limitations, does not imply Vestergaard et al. fails to suggest the Applicant's limitations. For instance, Vestergaard et al. discloses users searching for which MPE files to download. Further, Vestergaard et al. discloses a MPE Distributor Editor allowing distributors to select which files they want to sell and therefore process. Moreover, Vestergaard et al. discloses in an e-commerce environment, the consumer will typically **search** for MPE files using a search engine, or by visiting known distributors of MPE files. When an MPE file of interest is found on a Web page, the consumer clicks on a link to download the file (0105). In the broadest reasonable interpretation, a consumer can be interpreted to be a distributor also, where the distributor purchases products from other distributors.

3. Applicant argues (with respect to Claim 1) that Vestergaard et al. fails to teach the content owner setting a reseller commission for the file. Examiner asserts that Vestergaard et al. discloses source data (CD, WAV or MP3, plus image and text information) is input into the MPE encoder by the **content owner** (0093). Further, using the MPE encoder, a song key is generated which is used to add encrypted digital rights to the media **file**. These rights include a description of who should be compensated, and how much they should receive for **each download** (0094). Vestergaard et al. further discloses **compensation** can be in terms of a percentage of gross revenues, or based on a flat rate. The content owner sets the compensation for each file using the MPE encoder, where the MEP encoder also allows for entry of a price in US dollars for a consumer to purchase the MPE **file**. Also, the content owner must determine which price model to use while in this entry (0151-0152).

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4. Applicant argues that since Vestergaard et al. discloses only one MPE distributor may be specified at a time, that implies that Vestergaard et al. does not allow a first user to search for files posted on the digital marketplace for one to resell on a third party website since there is already a specified distributor. However, Examiner notes that the Applicant has misread the indicated citations. Examiner notes that Vestergaard et al. allows for a file to be reserved for one specific distributor such that no other distributor can modify the MPE file or be paid for sales of the MPE file, meaning that the content owner can make specific determinations regarding files for all distributors or only for one specific distributor, where the distributors can be specified using a drop down menu (0151). This interpretation is unlike the Applicant's interpretation which has been misapplied.

5. Applicant argues that Vestergaard et al. fails to disclose if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file, and paying the content owner a payment based on the retail price minus the reseller commission. However, Examiner notes that the content owner sets the price for the MPE file using the MPE encoder (0151). The content owner also sets the compensation for the distributor for performing the function of distributing the content owners files, where the compensation can be a flat rate (e.g. retail price minus a predetermined rate, where the flat rate can be increased or decreased) (0152). Furthermore, Vestergaard et al. discloses the MPE Distributor Editor allows Web sites or other businesses which distribute MPE files to alter existing MPE files such that they become the paid distributor (0158).

6. Applicant argues that Vestergaard et al. fails to disclose the content owner can edit the file information and change the retails price and reseller commission in real time. However,

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Examiner notes that Vestergaard et al. discloses a layout screen for MPE files, where basic information such as artist, song title, composer, genre, copyright information and album title can be entered (0132). This information is automatically entered into the MPE file as ID3 tags.

Further, Vestergaard et al. discloses an MPE encoder where the content owner can set the price to charge consumers for the MPE files (0151). The content owner can therefore set the price for the file using the MPE encoder at any point and without limitation as to time, therefore the content owner sets the price for the file in real time using the MPE encoder.

7. Applicant argues that Eglen et al. does not teach that it is the content owner that monitors download statistics and changes the retail price and reseller commission. However, Examiner notes that Eglen et al. teaches that the dynamic pricing system includes an administrative computer, where the administrator of the dynamic pricing system manages the dynamic pricing system with the administrative computer (0049). Eglen et al. further discloses that the administrator sets the original price for the item (0090). Furthermore, Vestergaard et al. discloses changing the retail price and the reseller commission for the file in real-time.

Applicant argues that Eglen et al. is only prior art if the portions of Eglen et al. relied upon by the Patent Office in the rejection have support in the provisional application to which Eglen et al. claims priority. Examiner points the Applicant to pages 21-24 and 31-34 of Eglen et al.'s provisional application specification.

8. Applicant argues that the Patent Office is attempting to equate the distributor of Vestergaard et al. as both the first user (reseller) and the digital marketplace of the claimed invention. Examiner notes that this is not the case, for instance, Vestergaard et al. discloses the system and method of Vestergaard et al. provides a wealth of features that benefit **content**

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owners, content distributors (resellers), and consumers (00167). Moreover, Vestergaard et al. discloses the content owner making listings of the MPE files on the distribution server. The consumers then interact with the **MPE servers and the distribution server** to identify and download the desired content (0090).

9. Applicant argues that Vestergaard et al. and Spagna et al. fail to disclose implementing at least six pricing models for file downloads within the digital marketplace. However, Examiner notes that Vestergaard et al. discloses three separate pricing models: free, pay, and sponsor (0058). Spagna et al. further teaches several other pricing models such as: wholesale, retail/purchase, pay-per-listen usage, subscription, copy/no-copy restrictions, and redistribution (C. 15, lines 34-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include many forms of pricing models into a digital marketplace.

10. Applicant argues that the Office Action lacks motivation to support the three way combination of Vestergaard et al., Shear et al., and Spagna et al. Examiner notes that claim(s) 7 (18) depends from claim(s) 6 (17), which further depends from independent claim 1 (12). Therefore, the Examiner has provided motivation for the combination of Vestergaard et al. and Shear et al. The Examiner has further provided motivation for Vestergaard et al. and Spagna et al. The motivation in combining Vestergaard et al. and Spagna et al. in claims 7 and 18 is inherently a motivation for combining the combination of Vestergaard et al. and Shear et al. and further with Spagna et al.

11. Applicant argues that Ferguson et al. fails to disclose sorting the matching files by popularity and by reseller commission. Examiner notes that Ferguson et al. teaches allowing a

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user to sort files by specifying search criteria (C. 10, lines 62-65). The users search criteria can be any criteria supported by the system, e.g. popularity. Further, Ferguson et al. teaches a user may search through documents by specifying various document attribute, such as fee for downloading the document (distributors can download files for a fee), etc. Ferguson teaches several sorting options, and it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include many different sorting options.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-4, 10-11, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1.

As per Claims 1 and 12, Vestergaard et al. discloses a method for providing digital content comprising:

- allowing a content owner to post a file on the marketplace for access by users by (0016 and 0090),
 - providing information about the file (0093);

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- setting a retail price that users will be charged for downloading the file (0094),
and
- setting a reseller commission for the file (0152);
- allowing a second user to search the files posted on the digital marketplace for one to download (0105);
- if the second user selects a particular file to download, charging the user the retail price set for the file (0094-0104);

Vestergaard et al. fails to explicitly disclose allowing a first user to search for the files posted on the digital marketplace for one to resell on a third party website. However, Vestergaard et al. discloses a MPE Distributor Editor, which allows distributors to select which tracks they want to sell and therefore process (0157-0162; see also Figure 11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a distributor to choose which tracks they would want to sell, because it improves the flexibility of the distributor in deciding which files they want to sell on their marketplace.

Vestergaard et al. fails to explicitly disclose if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission. Moreover, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the

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method of Vestergaard et al. and include paying distributor for distributing the file, while also paying the content owner a percentage for the content, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per Claims 3, Vestergaard et al. fails to explicitly disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying the distributor a percentage of the gross revenue, while also paying the content owner a percentage of the remaining portion of the gross revenue, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per Claim 4 and 15, Vestergaard et al. fails to explicitly disclose allowing the content owner to set the retail price and the reseller commission both positively and negatively. However, Vestergaard et al. discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing the content owner to modify the

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percentage of the gross revenue the distributor receives, because it provides the content owner the flexibility in adjusting the amount of revenue the content owner decides to retain for themselves.

As per **Claim 10**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 11**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

3. Claims **2, 13-14, 21-24, and 33-34** rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1.

As per **Claims 2 and 13**, Vestergaard et al. fails to explicitly disclose allowing the content owner to monitor download statistics for the file the content owner posted and to change the retail price and the reseller commission for the file in real-time. However, Eaglen et al. teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard et al. also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include changing the price

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of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen et al. provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

As per **Claim 14, 24 and 34**, Vestergaard et al. fails to explicitly disclose generating revenue for the digital marketplace by subtracting a transaction fee from the payment made to the content owner. However, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying the distributor a percentage of the gross revenue, while also paying the content owner a percentage of the remaining portion of the gross revenue, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

As per **Claim 21**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 22**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

As per Claims 23 and 33, Vestergaard et al. discloses a method for providing digital content comprising:

- allowing a content owner to post a file on the marketplace for access by users by (0016 and 0090),
 - providing information about the file (0093);
 - setting a retail price that users will be charged for downloading the file (0094),
and
 - setting a reseller commission for the file (0152);
- allowing a second user to search the files posted on the digital marketplace for one to download (0105);
- if the second user selects a particular file to download, charging the user the retail price set for the file (0094-0104);
- allowing the content owner to edit the file information (0093).

Vestergaard et al. fails to explicitly disclose allowing a first user to search for the files posted on the digital marketplace for one to resell on a third party website. However, Vestergaard et al. discloses a MPE Distributor Editor, which allows distributors to select which tracks they want to sell and therefore process (0157-0162; see also Figure 11). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a distributor to choose which tracks they would want to sell, because it improves the flexibility of the distributor in deciding which files they want to sell on their marketplace.

Vestergaard et al. fails to explicitly disclose if the second user downloads the particular file from the third party website, paying the first user the reseller commission set for the file; and paying the content owner a payment based on the retail price minus the reseller commission. Moreover, Vestergaard et al. discloses that the distributor is compensated a percentage of the gross revenues or based on a flat rate for each file distributed, while the content owner is also paid a percentage of the gross revenue of the file (0094, 0152-0154). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include paying distributor for distributing the file, while also paying the content owner a percentage for the content, because the marketplace is an e-commerce business which works as a typical business which ensures each party is compensated for the service they provide (0094).

Vestergaard et al. fails to explicitly disclose allowing the content owner to change the retail price and the reseller commission for the file in real-time. However, Eaglen et al. teaches a dynamic pricing technique which changes the price of a product depending on its demand (0007-0009, 0064, 0083). Vestergaard et al. also discloses compensating the distributor a percentage of the gross revenues, which of course can be increased or decreased accordingly (0152). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include changing the price of a product dynamically based on the demand for the product as taught by Eaglen et al, where the change in price also changes the distributor compensation. Eaglen et al. provides motivation by stating the price is adjusted based on demand for the item so as to maximize profit (0083).

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4. Claims **5, 16, 25, 30- 32 and 35** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per **Claims 5, 16, 25, 30 and 35**, Vestergaard et al. discloses three pricing models in which the digital files can be distributed through: a Free model, a Pay model and finally a Sponsored model (0058). Vestergaard et al. fails to disclose a subscription plan model, a broadcast model, a private download model, a donation, an infomercial model, and a pay-per-download model. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

As per **Claim 31**, Vestergaard et al. discloses implementing the digital marketplace as a website on a network (0042).

As per **Claim 32**, Vestergaard et al. discloses implementing the digital marketplace as a peer-to-peer network (0043).

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5. Claims **6 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Shear et al., U.S. Patent No. 6,112,181.

As per Claims 6 and 17, Vestergaard et al. fails to explicitly disclose requesting the first user to enter display options for the search. However, Vestergaard et al. discloses a search engine for searching for digital files, which then allows the user to download the file (0105). Shear et al. also teaches a matching and classification authority in which a distributor can query the authority for content that matches their search (C. 60, lines 10-50; C. 68, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include a search engine to enable the distributor to search for content as taught by Shear et al., because it provides the distributor with digital files that closely match their search criteria.

6. Claims **7 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al. Pub. No. US2002/0146122 A1 in view of Shear et al., U.S. Patent No. 6,112,181 as applied to claims, 1 and 12 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per Claims 7 and 18, Vestergaard et al. discloses a several different pricing options, one being a Free file pricing model (0058). Vestergaard et al. also discloses displaying to the user whether the digital file is free or not (0108). Vestergaard et al. fails to disclose where the

pricing options displayed are pay-per-download or files listed as resalable. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

7. Claims **8-9 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 8-9 and 19-20**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

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8. Claims **26-27 and 36-37** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claims 23 and 33 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1, and further in view of Shear et al., U.S. Patent No. 6,112,181.

As per **Claims 26 and 36**, Vestergaard et al. fails to explicitly disclose requesting the first user to enter display options for the search. However, Vestergaard et al. discloses a search engine for searching for digital files, which then allows the user to download the file (0105). Shear et al. also teaches a matching and classification authority in which a distributor can query the authority for content that matches their search (C. 60, lines 10-50; C. 68, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include a search engine to enable the distributor to search for content as taught by Shear et al., because it provides the distributor with digital files that closely match their search criteria.

As per **Claims 27 and 37**, Vestergaard et al. discloses a several different pricing options, one being a Free file pricing model (0058). Vestergaard et al. also discloses displaying to the user whether the digital file is free or not (0108). Vestergaard et al. fails to disclose where the pricing options displayed are pay-per-download or files listed as resalable. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard

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et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

9. Claims **28-29 and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claims 23 and 33 above, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claims 28-29 and 38**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

10. Claim **39** is rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claim 33 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092.

As per **Claim 39**, Vestergaard et al. fails to disclose requesting the first user to enter sorting options for the search, including as the sorting options sorting the matching files by popularity, by date, by size, by price, and by the reseller commission. However, Ferguson et al. teaches an index/search/retrieval capability which allows a user to search for file attributes such as size, date, price, etc., which later can be executed, viewed, printed, or filed (C. 10, line 62-C. 11, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Vestergaard et al. and include allowing a user to search and retrieve files according to certain file attributes as taught by Ferguson et al., because it allows for quick search through large collections of files (C. 10, lines 64-65).

11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vestergaard et al., Pub. No. US2002/0146122 A1 in view of Eaglen et al, Pub. No. US2003/0023505 A1 as applied to claim 33 above, and further in view of Ferguson et al., U.S. Patent No. 5,819,092, and further in view of Spagna et al., U.S. Patent No. 6,587,837 B1.

As per **Claim 40**, Vestergaard et al. discloses three pricing models in which the digital files can be distributed through: a Free model, a Pay model and finally a Sponsored model (0058). Vestergaard et al. fails to disclose a subscription plan model, a broadcast model, a private download model, a donation, an infomercial model, and a pay-per-download model. However, Spagna et al. teaches a retail purchase model, a pay-per-listen usage model, subscription service model, and a redistribution model (C. 15, lines 37-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to

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modify the method of Vestergaard et al. and include several different pricing models as taught by Spagna et al., because it provides the content owners a great deal of flexibility in determining which financial model to choose in order to maximize profit.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references

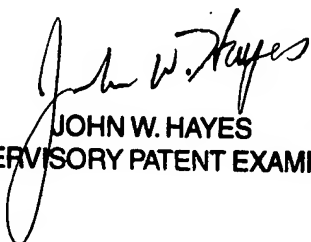
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in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

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Examiner
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FSJ